## Statement of Professor Angela J. Campbell Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era March 4, 2010

In December, the FCC issued the National Broadband Plan Public Notice #26, which asked, among other things, how television broadcasters are using the capabilities of digital television today. One would have thought that the FCC, the agency charged with awarding digital broadcast licenses and ensuring that licensees serve the public interest, would know the answer to that question. But in fact, the FCC collects no data on how broadcasters are using the digital spectrum.

Providing local news and informational programming, of course, has been a primary public interest obligation of television stations since they were first licensed. The FCC could have awarded national licenses, but instead allocated a large amount of spectrum so that television stations could be licensed to specific communities to serve the informational needs of those communities. The FCC expected that every licensee would provide local news and public affairs programming, an expectation that was reflected in the license renewal processing guidelines. Although the FCC repealed the processing guidelines in 1984, it reaffirmed that licensees retained a core public interest obligation to provide programming responding to community issues.

The FCC began planning for the transition to digital television, or what was then referred to as "Advanced Television" in 1987. The following year, the Commission tentatively concluded that allowing existing licensees to utilize advanced television was necessary to preserve the public interest benefits of the existing system of "privately-owned and operated"

broadcast stations that transmit local and regional news, information, and entertainment as well as national and international programs."

In the Telecommunications Act of 1996, Congress authorized the FCC to award digital licenses to all existing television licensees, and only existing licensees. Although existing licensees would initially receive additional spectrum to permit them to broadcast in digital as well as analog, at the end of the transition period, each licensee would have the same amount of spectrum as before – 6 Mhz in the television band. Thus, the plan replicated the existing spectrum allocation in favor of local service.

Congress reaffirmed that the transition to digital did not relieve television stations from their obligation to serve the public interest. Indeed, it conditioned the renewal of digital licenses upon a showing that all program services were in the public interest and directed the Commission to adopt regulations to ensure that any ancillary or supplementary services were also in the public interest.

The following year, the FCC reminded licensees that "existing public interest requirements continue to apply to all broadcast licensees," while putting them on notice that it would be considering new public interest rules for digital television in the future.<sup>2</sup> To assist the Commission in determining the appropriate public interest requirements for this new technology, President Clinton established an Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters consisting of 22 representatives of industry and the public. After holding numerous meetings, the Advisory Committee released a lengthy report in December 1998.

The Report reviewed the meaning of the public interest standard. It concluded that:

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<sup>&</sup>lt;sup>1</sup> Tentative Decision and Further NOI, 3 FCC Rcd 6520 at ¶39.

<sup>&</sup>lt;sup>2</sup> Fifth Report and Order, 12 FCC Rcd at 12830

In essence, the public interest standard in broadcasting has attempted to invigorate the political life and democratic culture of this Nation. Commercial broadcasting has often performed this task superbly. But when it has fallen short, Congress and the FCC have developed new policy tools aimed a achieving those goals. Specific policies try to foster diversity of programming, ensure candidate access to the airwaves, provide diverse views on public issues, encourage news and public affairs programming, [and] promote localism . . .

The Advisory Committee found that the increased capacity of digital television provided opportunities for improving political discourse, increasing program diversity, fostering localism, and serving underserved communities. To this end, it made ten recommendations to the FCC, Congress and the broadcast industry. For the most part, however, most of these recommendations have not been implemented.

In 1999, the FCC sought comment on these recommendations. After more than a decade, the FCC has only issued two rules addressing public interest obligations of digital broadcasters. First, it adopted rules governing television licensees' public interest obligations to children in 2004 that took effect in early 2007. Second, it adopted a rule implementing the Advisory Committee's First Recommendation on enhanced disclosure in November 2007.

The enhanced disclosure rule requires television licensees to prepare a quarterly report, known as Form 355, to file this report with the FCC, and to post it on their websites. One question on Form 355 asks broadcasters to report the average number of hours per week broadcast on each program stream of types of programming traditionally considered in the public interest including national news, local news produced by the station, local news produced by another entity, local electoral affairs, and public service announcements. Other questions ask about programming serving the needs of underserved communities, service for persons with disabilities, and the existence of local marketing or similar program sharing agreements.

The Form 355 data is highly relevant to this Future of Media proceeding, as well as many other FCC proceedings including the Quadrennial Ownership Reviews and the National Broadband Plan. Yet, incredibly, even though it has been more than two years since the FCC adopted enhanced disclosure rules, the FCC has not taken the steps necessary for this reporting requirement to take effect.

As a result, the FCC is dependent upon comments from the broadcasters themselves to find out what they are doing with the digital spectrum. In the broadband proceeding, for example, the MSTV and NAB, State Broadcasters Associations, and a few broadcast station owners filed comments making vague and unsupported claims about how they served the public interest by airing local news, emergency information and other community responsive programming.

It is difficult to confirm or disprove these claims in the absence of comprehensive data. However, there are indications that rather than maintaining the level of public interest programming prior to the digital transition, stations may be reducing public interest programming on their primary program stream. We do know that many stations do not provide any local news. And of those that do offer local news, the news is becoming less diverse and covering fewer issues with the increasing number of actual and virtual duopolies and triopolies, shared services agreements, local news services, layoffs and cutbacks. For example, even in New York, the largest television market, 5 of the 6 stations with regularly scheduled news have joined forces to jointly cover local news.

The Commission and the public also need to know whether and how digital television stations are using their multicast capabilities. The recent MSTV/NAB Broadband Comments report that a digital broadcaster can now transmit ten or more high quality video streams, even

more than the six projected by the Advisory Committee. But are these program streams being used to enhance political discourse, serve minority audiences, or provide educational programming for children? Again, the FCC lacks any comprehensive data with which to answer this question.

MSTV/NAB's survey of stations in Washington DC shows that the NBC, ABC and CBS affiliates are all transmitting a second program stream with a 24-hour weather service. Some stations are not multicasting at all, and none appears to be using multicast channels to provide additional local news or community based programming. The MSTV/NAB comments also claim, citing BIA's Media Access Pro, that broadcasters are airing over 1,400 multicast services. Since access to BIA's private data base is prohibitively expensive, I was unable to confirm this number or to find out more about the quantity or types of programming being multicast. But since there are 1,782 commercial and non-commercial full-power television stations on the air, it is fair to conclude that at least 382, and likely many more are, not providing any multicast program streams.

In conclusion, I cannot answer the question of whether commercial television broadcasters are meeting the information needs of communities in the Digital Era. Although the FCC has insisted that the transition to digital should not result in any diminution in public service, and indeed offered the potential for broadcasters to provide a greater quantity and diversity of news, local, and educational programming, it has both failed to adopt relevant public interest criteria for the digital age and failed to collect the data necessary to analyze whether community informational needs are being met.